There is one other matter which I must deal with. It was submitted by Mr. Dominic Puthucheary that the Industrial Court Award No. 34 of 1973 no longer exists as the Industrial Court, in exercise of its power under section 53(4)(c) of the Industrial Relations Act had varied the award and substituted therefor Award No. 51/73, and there is no application to quash this award. I fail to see any merit in the argument. It is evident that the second award was the result of the first award and the validity of the second award would therefore depend on whether the original award was a proper and valid award.

In the light of my finding there seems to be no further necessity to consider the applicant's contention that the Industrial Court had acted in excess of its jurisdiction.

For reasons that I have stated it is my judgment that the applicant is entitled to the relief sought. The Industrial Court Award No. 34/73 is hereby set aside and costs.

*Application allowed.*

Solicitors: *Ranjit Thomas & Kula; Skrine & Co.*

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## *RE* LEE KIM CHING

**[A.Cr.J. (Wan Hamzah J.) May 17, 1974]**
**[Ipoh — Criminal Revision No. 13 of 1974]**

*Evidence — Admissibility of admission made by offender — Refusal by lower court to admit admission — Failure of justice — Evidence Act, 1950, s. 24 — Criminal Procedure Code (F.M.S. Cap. 6), s. 422.*

One Lee Kim Ching a juvenile was charged under section 380 of the Penal Code with committing theft of two gold rings. In the course of the trial one of the prosecution witnesses was going to testify about an admission made to her by the offender. The President of the Juvenile Court ruled that the admission by the offender to the prosecution witness was inadmissible. The offender was acquitted and discharged without defence being called. The President of the Juvenile Court subsequently forwarded the case record to the High Court with a view to revision.

**Held:** (1) under section 24 of the Evidence Act a confession is irrelevant only if it had been caused by inducement, threat or promise proceeding from a person in authority and since the prosecution witness in question was not a person in authority in relation to the offender section 24 did not apply in this case;

(2) under section 422 of the Criminal Procedure Code no finding or order made by a lower court is to be reversed or altered on account of improper rejection of evidence unless such improper rejection has occasioned a failure of justice. In the present case the rejection of the offender's admission had occasioned a failure of justice in that if the admission had been admitted the court would probably have found the offender guilty instead of acquitting her;

(3) in this case the offender should be discharged, such discharge not amounting to an acquittal, so that the prosecution can bring fresh proceedings against the offender if it wish to do so.

REVISION.

*Wan Abdul Majid bin Wan Hamid*, (Deputy Public Prosecutor) for the prosecution.

*Soo Wai Sun* for the respondent.

**Wan Hamzah J.:** The respondent, Lee Kim Ching, was charged under section 380 of the Penal Code with committing theft between 9.30 a.m. and 8.00 p.m. on 28 February 1973, of two gold rings belonging to Heline Wong Yoke Chan in a building used as a human dwelling.

According to the prosecution evidence the facts of this case are as follows. On 28 February 1973 at about 9.30 a.m. Heline Wong Yoke Chan, a hair stylist, went to work at the Diamond Hair Perm Parlour. She placed her handbag in the room of the owner of the shop, named Ah Heng. She kept her rings in the handbag. When she went home at about 8.00 p.m. or 9.00 p.m. she found her rings missing. The owner of the shop had a sister by the name of Khong Sai Moi who was working in the shop as an assistant. She was called by the prosecution as a witness (PW2). She testified that after hearing that Heline Wong Yoke Chan had lost her rings she went to the offender's house together with two other persons. There she asked the offender certain questions. The offender produced a ring, which was identified by PW2 as the ring marked as exhibit P1, *i.e.* one of the rings which Heline Wong Yoke Chan had lost. It appears from the record that during the course of the examination-in-chief of PW2 objection was raised by the defence counsel to the admission in evidence of certain matter which PW2 was about to testify, and it appears that what PW2 was going to testify was about an admission made to her by the offender. From the record it is not clear what the grounds of objection were precisely, but there were notes made by the learned President of the Juvenile Court referring to sections 112 and 113 of the Criminal Procedure Code and section 25 of the Evidence Act. In any event he made a ruling that the admission by the offender to PW2 was inadmissible. Then the trial of the case was continued until the close of the prosecution case when the offender was acquitted and discharged without defence being called.

The prosecution did not appeal against the decision of the learned President, but subsequently he himself forwarded the case record to the High Court together with a statement of the grounds of his decision for perusal with a view to revision if the High Court should find that such exercise is desirable. In the statement of his grounds of decision the learned President stated that the reason why he refused to admit into evidence what PW2 was about to testify as to the admission made to her by the offender was that "there is absolutely no evidence to establish that the admission made by the alleged offender was voluntary." It appears that the learned President now has some doubts as to the correctness of his decision.

On 2 May 1974 the parties to this case appeared before me to argue on the question of whether I should exercise revision in this case. On behalf of the offender it was contended that under section 24 of the Evidence Act a confession is irrelevant and therefore inadmissible unless it is shown that the confession had not been caused by any inducement, threat or promise, and since in this case the prosecution had not adduced evidence to show that there had been no inducement, threat or promise made to induce the offender to make confession, her admission to PW2 is inadmissible. On behalf of the prosecution it was contended that the learned President erred in refusing to admit that piece of evidence for two reasons: —

(a) under section 24 of the Evidence Act a confession is irrelevant only if it had been caused by inducement, threat or promise proceeding from a person in authority and since PW2 was not a person in authority section 24 does not apply in this case even if it were shown that PW2 had made inducement, threat or promise to induce the offender to make confession; and

(b) the court is not to presume that a confession was not made voluntarily in the absence of evidence to that effect.

I agree with the learned Deputy Public Prosecutor that there is no evidence to show that PW2 was a person in authority in relation to the offender. Evidence merely shows that PW2 and the offender were fellow workers in the perm parlour. Therefore section 24 has no application. Even if there was evidence of inducement, threat or promise by PW2 to the offender, her admission to PW2 would be admissible, but in that event the court should of course consider how much weight should be attached to an admission which was obtained as the result of the inducement, threat or promise. In view of my concurrence with the learned Deputy Public Prosecutor's submission on the first point, it is not necessary for me to deal with his second point.

Under section 422 of the Criminal Procedure Code no finding or order made by a lower court is to be reversed or altered on account of improper rejection of evidence unless such improper rejection has occasioned a failure of justice. I hold that the present case is one in which the rejection of the offender's admission has occasioned a failure of justice in that if the admission had been admitted the court would probably have found the offender guilty instead of acquitting her. I therefore order that the acquittal of the offender be set aside.

The next question to consider is whether an order should be made to send this case back to the lower court for continuation of trial. I am not sure whether if this case is sent back and the time arrives for continuation of hearing in the lower court, the same learned President who has heard this case would still be officiating in the court, or whether the prosecution witnesses would still be available in the event of the defence wishing to cross-examine them further. Therefore in my opinion it would be better to order that the offender be discharged, such discharge not amounting to acquittal, and the prosecution should have liberty to bring fresh proceedings against the offender if it so wishes, and I order accordingly.

I take this opportunity to make an observation on what in my opinion was an improper admission of irrelevant evidence in this case. I refer to the statements of the prosecution witnesses referring to the alleged theft by the offender of a shirt on a different occasion. Even if no objection was raised against admission of irrelevant matters, the learned President should have not allowed them to go on record in evidence.

*Order accordingly.*

Solicitor: *Soo Wai Sun & Co.*

## TEMENGGONG SECURITIES LTD. & ANOR. v. REGISTRAR OF TITLES, JOHORE & ORS.

**[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Ong Hock Sim F.J.) May 24, 1974]**

**[Kuala Lumpur — Federal Court Civil Appeal Nos. 104, 109 and 110 of 1973]**

*Land Law — Caveat — Whether rightly and properly entered — Agreement for sale of land — Memorandum of transfer presented for registration — Judgments obtained by Government against vendors for income tax — Contingent claim by Revenue — Prohibitory order entered — Instruments rejected on ground that Registrar's caveat had been entered — National Land Code, ss. 320, 321, 336 and 417.*

In this case the appellants had entered into an agreement for the purchase of certain lands belonging to a private company. The memorandum of transfer was presented for registration on December 14, 1972. On December 19, 1972 the Government of Malaysia obtained judgments against the vendor for income tax and pursuant thereto, the Government obtained two prohibitory orders, which were entered on the register of documents of title. On March 15, 1973, the appellants were informed that the instruments had been rejected on the ground that the Registrar's caveat had been entered against the land. The appellants applied for an order to direct the Registrar of Titles to cancel the caveat and register the transfer. This was dismissed in the High Court and the appellants appealed to the Federal Court.

**Held,** allowing the appeal: (1) the vendors having parted with their interest in the lands to the appellants were bare trustees and had no interest in the land over which a valid caveat could be lodged;

(2) as the caveat was wrongly entered, the Registrar ought to have registered the documents presented and the registering authority must therefore be ordered to accept and register the documents presented.

**[Editorial Note:** The Registrar of Titles' application for conditional leave to appeal to His Majesty the Yang Dipertuan Agung and for stay of execution was refused by the Federal Court on August 19, 1974.]

*Cases referred to:-*

(1) *Lysaght* v. *Edwards* (1876) 2 Ch. D. 499 at p. 506.
(2) *Williams* v. *Greatrex* [1957] 1 W.L.R. 31 at p. 36.
(3) *Mills* v. *Haywood* (1877) 6 Ch. D. 196, 202-3.
(4) *Bachan Singh* v. *Mahinder Kaur* [1956] M.L.J. 97 at p. 98.
(5) *Karuppiah Chettiar* v. *Subramaniam* [1971] 2 M.L.J. 116 at p. 117.

FEDERAL COURT.

*R. C. Hoffman* (*Wong Kim Fatt* with him) for the appellants.

*Haji Mohamad Eusoff bin Chin,* Legal Adviser, Johore for the respondent in F.C.C.A. 104 of 1973.

*Zulkifli bin Mahmood* (Senior Federal Counsel) for the respondents in F.C.C.A. 109 and 110 of 1973.

**Ong Hock Sim F.J.** (delivering the judgment of the Court): We propose to deal with these three appeals together. As agreed by Encik Zulkifli bin Mahmood on behalf of the Inland Revenue in his Written Submission to the Court in F.C. Civil Appeals Nos. 109 and 110 of 1973, they "refer to the same subject matter" and "the respondent had no objection" to all the appeals being heard at the same time.

The court is of opinion that if the decision is in favour of the appellants in Civil Appeal No. 104 of 1973, then it must follow that the prohibitory orders registered on December 27, 1973 would be ineffective by reason of the presentation of the Memorandum of Transfer and associated documents on December 14, 1973 and ought therefore to be set aside.